

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Amendment of Part 20 and 24 of the)	WT Docket No. 96-59
Commission's Rules -- Broadband PCS)	
Competitive Bidding and the Commercial)	
Mobile Radio Service Spectrum Cap)	
)	
Amendment of the Commission's Cellular)	GN Docket No. 90-314
PCS Cross-Ownership Rule)	

To: The Commission

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COMMENTS OF THE AD HOC RURAL PCS COALITION

Ad Hoc Rural PCS Coalition

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SUMMARY

The Ad Hoc Rural PCS Coalition ("Coalition") files these comments in the interests of its rural telephone company and small business members. In large part, the comments support the suggestions advanced in the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM") concerning the F block broadband Personal Communications Services ("PCS") auction.

The Budget Act of 1993 authorized the FCC to auction spectrum for commercial use, but mandated that the auction procedures attempt to disseminate licenses to a wide variety of applicants, including small businesses and rural telephone companies. The Commission's auction procedures for broadband PCS have utterly failed to meet this objective. As a result, the Coalition strongly urges the FCC to limit eligibility in the F block broadband PCS auction to small businesses and rural telephone companies as defined in the current rules.

In addition to proposing a limitation on eligibility for the F block, the Coalition's comments offer other proposals to ensure that the Budget Act mandates of avoiding excessive concentration and broadly disseminating PCS licenses are met. First, the Coalition advocates retaining the current definition of rural telephone company to prevent larger entities from masquerading as rural telephone companies by abusing the broader definition contained in the 1996 Telecommunications Act. Second, cellular

companies should be permitted to own two 10 MHz blocks of PCS because, as the Court in Cincinnati Bell ruled, there is no reason to believe that cellular companies would have the ability to act anticompetitively with this amount of spectrum. Third, the overall limit on the number of Basic Trading Area licenses that a single licensee may win should be lowered to 20 to encourage broad dissemination of licenses. Finally, other rule changes discussed herein should be implemented to streamline the auction process and advance statutory and public policy goals.

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COMMENTS OF THE AD HOC RURAL PCS COALITION

The Ad Hoc Rural PCS Coalition¹ (the "Coalition"), by and through its undersigned attorneys, hereby files its comments in response to the Federal Communications Commission's ("FCC" or "Commission") March 20, 1996 Notice of Proposed Rulemaking² concerning the auctions for broadband Personal Communications Services ("PCS") licenses in the D, E and F blocks.

STATEMENT OF INTEREST

In response to the Commission's statement that parties with similar interests should file joint comments where possible, the

¹ Members of the Coalition include Cellular Mobile Systems of St. Cloud General Partnership, Lakedale Telephone Company, Sherburne County Rural Telephone Company, Leaco Rural Telephone Cooperative, Inc. and Melrose Telephone Company.

² Notice of Proposed Rulemaking, Matter of Amendment of Part 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and The Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, Amendment of the Commission's Cellular PCS Cross-Ownership Rule, GN Docket No. 90-314, FCC 96-119, (March 20, 1996) (the "NPRM").

Coalition files these joint comments to support the interests of numerous rural telephone companies and other small businesses seeking to provide PCS and other wireless telephony services to rural America. These companies plan to participate in the FCC's D, E and F block auctions of 10 Mhz of PCS spectrum. Many members have already spent significant time and resources planning for these PCS auctions, including arranging financing, exploring construction and equipment purchases, and negotiating bidding coalitions or partitioning agreements.

DISCUSSION

I. The Commission Should Limit Eligibility For The F Block Auction To Statutory Designated Entities.

A. Eligibility Limits Are Necessary To Avoid Excessive Concentration And Meet The Budget Act Mandate.

Under the Budget Act of 1993³ which authorized the FCC to use auctions to distribute spectrum for commercial use, Congress directed the Commission to avoid excessive concentration of licenses and to disseminate licenses among a wide variety of applicants, including "small businesses" (defined as companies with less than \$40 million in gross revenues in the preceding three years) and rural telephone companies.⁴ The Budget Act also directed the Commission to promote development and rapid

³ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, section 6002(a), 107 Stat. 312, 388 (1993) ("1993 Act" or "Budget Act").

⁴ See 47 C.F.R. § 24.720(b)(1) (1995) (definition of small business); 47 C.F.R. § 24.720(e) (definition of rural telephone company).

deployment of new technologies and services to rural areas.⁵

Despite this statutory mandate, the Commission's efforts have not met these goals.

Notably, the record in the PCS auctions to date indicates that the Commission has failed to avoid excessive concentration, as required in the Budget Act. For example, in the A and B block auction of PCS spectrum, three large conglomerates with strong telephone, cellular and cable television interests won the vast majority of spectrum available.⁶ Of those three entities, one is affiliated with AT&T, one is backed by a coalition of Regional Bell Operating Companies, and one combines the resources of three major cable companies and Sprint Corporation. By contrast, small businesses and rural telephone companies won only two licenses and won no licenses in major markets.⁷ The Commission's record in other auctions also demonstrates a concentration of licenses in the hands of the largest, most well financed entities, while small businesses and rural America are left behind.⁸

⁵ Id. (now codified at 47 U.S.C. section 309(j)).

⁶ See generally Applications for A and B Block Broadband PCS Licenses, Order, DA 95-1411 (June 23, 1995).

⁷ See generally Applications for A and B Block Broadband PCS Licenses, Order, DA 95-1411 (June 23, 1995). Only one small business -- Poka Lambro Telephone Cooperative, Inc. -- won PCS licenses in the A and B block auction.

⁸ For example, no designated entities ("DEs") won licenses in the nationwide Narrowband PCS Auction held July 24-29, 1994 and while eleven small businesses won licenses in the regional Narrowband PCS auction held October 26 through November 8, 1994, ten of those licenses were specifically reserved for DEs. See, e.g., Matter of Implementation of Section 309(j) -- Competitive Bidding, Narrowband PCS, 10 FCC Rcd 175, 178 (1994) ("noting lack

Recognizing this problem, the NPRM requests comment on whether the Commission should "make adjustments to the financial eligibility threshold for the F block auction."⁹ Because such adjustments are sorely needed to meet the Budget Act directive of avoiding excessive concentration of licenses, the Commission should provide that only statutory designated entities under the Budget Act -- i.e., small businesses and rural telephone companies ("rural telcos") -- are eligible to participate in the F block auction. By restricting eligibility only to these designated entities who have been overwhelmingly denied licenses in the previous broadband PCS auctions, the Commission can ensure a more widespread dissemination of PCS licenses and avoid an excessive concentration of licenses.

B. Large "Entrepreneurs" Must Be Excluded From the F Block To Ensure That PCS Licenses Reach Small Businesses And Rural Telephone Companies.

The Budget Act specifies that licenses should be distributed to a wide variety of applicants, including rural telephone companies, small businesses and minority and female-owned businesses, but says nothing about distributing licenses to "entrepreneurs" (defined by the FCC to include companies with up

of DEs among winning bidders"); "FCC Announces Results of PCS Regional Narrowband License Auction," 1994 FCC LEXIS 5617 (Nov. 8, 1994). Small businesses were similarly unsuccessful in the Commission's Direct Broadcast Satellite Auction held Jan. 24, -Jan. 26, 1996.

⁹ NPRM at para. 33.

to \$125 million in gross revenues and \$500 million in assets).¹⁰ By limiting participation in the F block auction solely to statutory designated entities, the Commission can target opportunities to those who Congress designated should receive those opportunities. Further, to the extent the Commission is attempting to meet the Budget Act directive of promoting racial and gender diversity of licensees, limiting eligibility to small businesses will also support this statutory goal because most minority and female-owned businesses have under \$40 million in gross revenues.¹¹

The Budget Act says absolutely nothing about disseminating licenses to "entrepreneurs" and there is no evidence that opportunities for statutory designated entities are advanced by preferences for these entrepreneurs. It was the Commission and certain industry groups that defined entrepreneurs as entities deserving of special eligibility preferences.¹² Inclusion of

¹⁰ 47 U.S.C. § 309(j). Although businesses owned by minorities and women also constitute designated entities under the statute, the NPRM proposes to eliminate most special preferences for minority and women-owned businesses in light of the Supreme Court decision in Adarand and in light of the NPRM's finding that many of these businesses will also qualify as small businesses. Adarand Constructors, Inc. v. Pena, 115 S.Ct. 2097 (1995); NPRM at paras. 19-27.

¹¹ See generally Implementation of Section 309(j) -- Competitive Bidding, Sixth Report and Order, 60 FR 37786 (July 21, 1995) ("Sixth Report and Order") at para. 11 ("we have evidence that many designated entities, including minority and women-owned businesses, would qualify as small businesses...."). See also NPRM at paras. 25-27.

¹² See, e.g., Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5532 (1994) ("Fifth Report and Order") at paras. 121-124

"entrepreneurs" with up to \$125 million in gross revenues and \$500 million in assets in the C and F block auctions was a policy-driven decision, not a statutorily mandated act.¹³

Because the Commission has a duty to preserve benefits provided by statute before creating new privileges as a result of rulemaking, the F block should be set aside exclusively for entities specifically designated by Congress for assistance -- in this case, small businesses and rural telephone companies.¹⁴

Small businesses and rural telcos have had difficulty competing under the current PCS auction rules. The Commission has noted that, under the current eligibility structure, it remains difficult for "small businesses" to successfully bid for spectrum against entrepreneurs with \$125 million in revenues:¹⁵

[S]mall entities stand little chance of acquiring licenses in these broadband auctions if required to bid against existing large companies, particularly large

(entrepreneur block plan is "similar" to proposals asking FCC to reserve spectrum blocks for bidding only by designated entities with no explanation for diverging from definition of designated entities); Id. at 156.

¹³ Fifth Report and Order at para. 123-124.

¹⁴ Consistent with the FCC's C Block rules, bidding consortia of small businesses or rural telcos should also be eligible for the F block auction provided each member of such a consortium meets the eligibility requirements for the auction.

¹⁵ Fifth Report and Order at para. 13 (small businesses "will be at a disadvantage in competing against companies with gross revenues of as much as \$125 million"); id. at 108 ("Small businesses also have not become major participants in the telecommunications industry....[T]en large companies -- six Regional Bell Operating Companies, Air Touch, McCaw, GTE and Sprint -- control nearly 86 percent of the cellular industry.") See also Results of the A, B and C block MTA auctions, supra, note 7

telephone, cellular and cable television companies. If one or more of these big firms targets a market for strategic reasons there is almost no likelihood that it could be outbid by a small business.¹⁶

The obvious solution to this problem is to limit eligibility in the F block auction to designated entities, rather than forcing them to compete with a larger group of wealthier entrepreneurs.

Inclusion of large entrepreneurs in the C block PCS auction has interfered with opportunities for designated entities to obtain PCS licenses. For example, companies meeting the definition of an entrepreneur have driven prices for the C block licenses outside the range of what most small and rural telecommunications businesses can afford. Larger telecommunications interests also have chosen to offer financial support primarily to the largest applicants in the C block auction in exchange for agreements or tacit understandings that winning licensees will become affiliated with these incumbents.

While the Coalition recognizes that expanding eligibility in the C and F blocks to entrepreneurs may minimize concentration among financial behemoths of the industry, the problem of larger entities pushing small businesses out of a new telecommunications market remains. Instead of being outbid by the telecommunications giants, small businesses and rural telcos are losing auctions to "entrepreneurs" who are three times wealthier. This problem will be cured if the Commission uses the F block

¹⁶ Fifth Report and Order at para. 121. Report and Orders not otherwise identified herein also refer to this same docket proceeding.

rules to promote the interests of entities designated for assistance by statute, rather than to support so-called entrepreneurs.

C. Eligibility Limits Are The Best Available Method to Meet the Budget Act Mandate.

Without eligibility restrictions, there can be no guarantee that statutory designated entities will succeed in acquiring licenses. The use of bidding credits or favorable payment terms alone cannot guarantee a small business the opportunity to compete in markets targeted by their larger "entrepreneurial" competitors.¹⁷ To date, only eligibility restrictions have succeeded in guaranteeing that licenses are broadly distributed and excessive concentration avoided as the Budget Act mandates. With only three 10 MHz blocks of broadband PCS spectrum remaining to be auctioned for each BTA, the time has come for the Commission to use the most effective means available -- eligibility limitations -- to assure designated entities of a reasonable opportunity to win licenses before all the PCS spectrum is auctioned.

Setting aside the F block for small business and rural telephone companies does not exclude entrepreneurs from access to PCS spectrum. First, based on current bidding results, larger entrepreneurs will be successful in obtaining PCS spectrum in the 30 MHz C block auction. Second, entrepreneurs have had more opportunity to obtain PCS spectrum than any other class of

¹⁷ Fifth Report and Order at para. 121.

bidders because of their relative size and their eligibility for all three 30 MHz spectrum blocks.¹⁸ Excluding them from a single 10 MHz block auction is insignificant in comparison with the opportunities they have had to acquire spectrum. For all these reasons, the FCC should restrict eligibility in the F block to small businesses and rural telcos so as to meet the Budget Act mandate of avoiding excessive concentration and disseminating licenses among a wide variety of applicants, specifically designated entities.

II. The Commission Should Extend Small Business Bidding Credits and Installment Payments To All 10 MHz Block Auctions.

To some extent, the NPRM recognizes that rural telephone companies and small businesses have trouble competing with larger, more well financed auction participants, including entrepreneurs. As one solution to this problem, the NPRM proposes to extend more favorable installment payment plans and bidding credits to small businesses in all three 10 MHz block auctions.¹⁹ The Coalition agrees with the Commission's tentative conclusion that "extension of installment payments could result in disseminating licenses in the D and E blocks to a wider

¹⁸ See Fifth Report and Order, para 127.

¹⁹ NPRM at para. 53-54. These credits were extended to all small businesses in the F block in the wake of the Adarand decision which the FCC views as prohibiting preferential treatment to minority or female-owned businesses. The NPRM requests comment whether such provisions should be extended to all licenses. Id. The Coalition assumes that any extension of bidding credits and installment payments to small businesses and rural telephone companies would be done on the same terms in all three 10 MHz PCS spectrum blocks.

variety of applicants" by increasing the chances for small businesses to win a license.²⁰ Although merely extending bidding credits or installment payments to all three 10 MHz auctions is not sufficient to overcome the tremendous financing advantages larger entities have in bidding on PCS licenses, the Coalition supports extending these mechanisms because of the incremental impact they can have in improving opportunities for designated entities to participate in provision of PCS.

Moreover, the tiered bidding credits used by the Commission for the 10 MHz blocks could be modified to include "entrepreneurs." The Coalition proposes that the FCC grant bidding credits according to the following schedule:

Entrepreneurial Businesses (\$40 million-\$125 million in revenue)	10 percent bidding credit
Small Businesses (under \$40 million in revenue) and Rural Telephone Companies	25 percent bidding credit

Extending such bidding credits to entrepreneurs could help compensate for their removal from eligibility in the F block auction and could help them to compete with larger businesses in the D and E block auctions. For similar reasons, installment payments should be extended to small businesses, rural telephone companies and entrepreneurs in all three 10 MHz block auctions under the same conditions used in the F block auction.²¹

III. The Definition of A Rural Telephone Company

²⁰ NPRM at para. 54.

²¹ Fifth Report and Order, at para. 114.

**Specifically Established For PCS Auctions Should Apply
Rather Than The Definition From the 1996 Act.**

The NPRM also proposes changing the definition of a rural telephone company to comply with the broader definition of rural telephone company set forth in the Telecommunications Act of 1996 (the "1996 Act").²² Because the 1996 Act's definition of a rural telephone company would extend designated entity status to new companies that may not truly be characterized as a rural telco or a small business, the new definition would undermine efforts of legitimate designated entities to participate in PCS licensing.

In the Fifth Report and Order, the Commission carefully balanced the need for rapid deployment of PCS to rural areas against the danger of giving benefits to large companies that do not require special assistance and decided to define rural

²² The 1996 Act defines a rural telephone company as a LEC entity that:

(A) provides common carrier service to any LEC study area that does not include either --

- (i) any incorporated place of 10,000 inhabitants or more, or any part thereof; or
- (ii) any territory included in an urbanized area as defined by the Bureau of the Census as of August 10, 1993;

(B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;

(C) provides telephone exchanges service to any LEC study area with fewer than 100,000 access lines; or

(D) has less than 15 percent of its access lines in communities of more than 50 000 on the date of enactment of the 1996 Act.

1996 Act, Pub. L. No. 104-104, Section 3(a)(47)(C), 110 Stat. 56 (1996).

telephone companies to include "a local exchange carrier having 100,000 or fewer access lines, including all affiliates."²³ In so doing, the Commission was careful to limit the size of eligible companies and include only "legitimate" rural telephone companies, because "Congress did not intend [] to give special treatment to large LECs that happen to serve small, rural communities."²⁴

Adopting the 1996 Act definition of rural telephone companies would destroy this balance and could allow large LECs to masquerade as rural telephone companies in the F block auction. For example, under the 1996 Act, a large LEC that happens to serve a study area with fewer than 100,000 access lines is classified as a rural telephone company.²⁵ Similarly, a large LEC also could qualify as a rural telephone company under the part of the 1996 Act definition protecting companies with "less than 5 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996."²⁶ This part of the definition could allow a LEC

²³ NPRM at para. 51; Fifth Report and Order, 9 FCC Rcd at 5617; 47 C.F.R. section 24.720(e).

²⁴ Fifth Report and Order at para. 196, 198. See also Second Report and Order at para. 282.

²⁵ 1996 Act, Pub. L. No. 104-104, Section 3(a)(47)(C), 110 Stat. 56 (1996). The definition does not even limit a large LEC's enjoyment of rural telephone company status to that part of its service that covers a study area of fewer than 100,000 access lines. Theoretically, one of the nation's largest LECs could serve one study area of fewer than 100,000 access lines and thereby qualify as a rural telephone company for all of its service.

²⁶ 1996 Act, Section 3(A)(47)(D).

that operates in only part of a large city (less than 15 percent) but in all of its suburbs to qualify. It would also cover a LEC serving a city that is growing rapidly and recently increased to over 50,000 people. Neither of these entities is the type of legitimate "rural" telephone company envisioned by the Budget Act. In light of the anomalies that could potentially result from an application of the 1996 Act definition, the Commission should continue to apply its bright line definition that a rural telephone company is a LEC with fewer than 100,000 access lines.

Adhering to this definition of a rural telephone company for the PCS spectrum auctions is entirely consistent with the 1996 Act. Nothing in the 1996 Act or its legislative history says anything about applying the new definition of rural telephone companies to the specific context of the broadband PCS auction.²⁷ To the contrary, the new definition of a rural telephone company in the 1996 Act focuses on completely different rights and obligations, such as the exemption rural telephone companies receive from interconnection requests by virtue of Section 251(f) of the 1996 Act.²⁸ Many terms used in the Commission's broadband PCS auction rules are defined differently from the way the same term is defined elsewhere in the Communications Act. Special definitions have often been applied concerning the size of entities participating in the broadband PCS auction because of

²⁷ See, e.g., Conference Report at H 1107-1108 (merely stating that the Senate accedes to the House's proposed definition of a rural telephone company).

²⁸ 1996 Act, new Section 251(f).

the auction's capital intensive nature -- e.g. a special definition is used for the term "small business" as well.²⁹ Given that Congress made no indication of a desire to override these specific rules and definitions, the Commission may continue to use the old definition of a rural telephone company in the context of the broadband PCS auction. Moreover, now is not the time to change the definition because the PCS licensing process is more than half completed. 90 MHz of PCS spectrum has already been auctioned and legitimate rural telephone companies have made plans and formed coalitions in reliance on the current rules. Allowing additional companies to become classified as rural telephone companies at this late date would undermine the business plans that legitimate companies have made in reliance on the Commission's rules.

III. Cellular/PCS Cross-Ownership Rules Must Be Relaxed In Light of the Cincinnati Bell Ruling.

Late last year, the U.S. Court of Appeals for the Sixth Circuit overturned the Commission's cellular/PCS cross-ownership rule and its 20 percent affiliation requirement for cellular licensees as arbitrary and inadequately supported. See Cincinnati Bell Telephone Co. v. FCC, 69 F.3d 752 (6th Cir. 1995). The Court concluded that the Commission's rationale for these rules -- that cellular providers might engage in anticompetitive practices or exert undue market power absent restrictions on the amount of PCS spectrum they were allowed to

²⁹ See Fifth Report and Order, at paras. 193-198.

own within their cellular service areas -- was not necessarily persuasive and was not supported by evidence before the Commission.³⁰ As a result, the NPRM requests comment on whether the PCS/Cellular cross-ownership rule should be relaxed or retained.³¹

The Coalition believes that the PCS/Cellular cross-ownership rules should be relaxed so as to eliminate specific restrictions on cellular licensees holding more than 10 MHz of broadband PCS spectrum before the year 2000.³² Such rules are not necessary because the current 45 MHz spectrum cap for all types of Commercial Mobile Radio Services ("CMRS") spectrum³³ is an adequate check on the power of cellular licensees to influence the broadband PCS market. Under this spectrum cap, a cellular licensee may not own more than 20 MHz (two 10 MHz blocks) of other CMRS spectrum in its area. With 120 MHz of PCS spectrum available in each MTA or BTA (90 MHz of which has already been auctioned or is in the process of being auctioned), plus 50 MHz of cellular spectrum and varying degrees of Specialized Mobile Radio and other mobile radio options available to consumers, there is little risk that a cellular licensee will exert undue market power if allowed to acquire 20 MHz of broadband PCS spectrum.

³⁰ Cincinnati Bell, 69 F.3d at 762-63.

³¹ NPRM at para. 66.

³² 47 C.F.R. section 24.204; NPRM at para. 64.

³³ See 47 C.F.R. section 20.6(a).

In fact, the overall spectrum cap is a more accurate check against abuses of market power because it measures the amount of spectrum held by licensees in all CMRS services which compete against one another.³⁴ Allowing cellular licensees to own 20 MHz of broadband PCS spectrum (out of the 120 MHz available) strikes a positive balance between providing customers with rapid access to new technologies and ensuring that the market does not become too highly concentrated. For these reasons, the Coalition agrees with the NPRM's suggestion that cellular operators should be allowed to own up to two 10 MHz blocks of PCS spectrum.³⁵ Alternatively, if the FCC is still concerned about market power of cellular licensees after Cincinnati Bell, it may wish to provide that only cellular licensees of a certain size (e.g. those qualifying as small businesses or rural telephone companies) may own 20 MHz of PCS spectrum.

IV. Other Issues.

While the NPRM requests comment on a host of other issues involving the D, E and F block auctions, the Coalition will briefly comment only on the remaining issues most likely to affect small, rural PCS providers.

First, the Coalition supports holding all three 10 MHz block

³⁴ See generally Implementation of Sections 3(n) and 32 of the Communications Act: Regulatory Treatment of Mobile Services, Second Report and Order, GN Docket No. 93-252 (1994) at para. 143; Implementation of Sections 3(n) and 32 of the Communications Act: Regulatory Treatment of Mobile Services, Third Report and Order, GN Docket No. 93-252, 9 FCC Rcd 7988 (1994) at para. 239.

³⁵ NPRM at para. 66.

auctions simultaneously, as proposed in the NPRM.³⁶ If the F block auction were held after the D and E blocks, bids could skyrocket beyond their true value because of a perception that this was the last available spectrum for broadband PCS usage. Holding the auctions simultaneously is also more efficient for smaller entities seeking to bid on all three blocks because they can better keep track of their scarce resources.

Second, the Coalition believes the Commission should amend section 24.710 of its rules and regulations to decrease the number of BTA licenses that can be won by a single auction bidder. Current rules provide that no applicant can win more than 98 of the total licenses available in Blocks C and F.³⁷ The Commission implemented this rule because of a concern that "the benefits that Congress intended for designated entities would be enjoyed, in disproportionate measure, by only a few individuals or entities."³⁸ Nonetheless, as noted above, the largest entrepreneurs appear to be the most successful bidders in the C block auction. To ensure a true dissemination of licenses to a broad variety of licensees and to help meet the mandate of the Budget Act, the Coalition believes that no licensee should be permitted to win more than 20 F block licenses. Limiting to 20 the number of licenses each applicant can win will broaden ownership of the spectrum, allowing a minimum of 25 F block

³⁶ NPRM at paras. 85-86.

³⁷ 47 C.F.R. section 24.710(a) (1995).

³⁸ Fifth Report and Order, para. 169.

licensees rather than the minimum of five under the current rule. The Coalition urges the Commission to modify its rules accordingly.

Third, the Coalition supports the FCC's tentative conclusion that its 50.1/49.9 percent equity structure should be made available to all small businesses and entrepreneurs in light of the Adarand ruling.³⁹ However, the Coalition opposes proposals to change the equity structure options so that they depend on new, undefined concepts, such as "controlling principals."⁴⁰ Addition of such new concepts would interfere with pre-existing ownership and investment relationships established by applicants for the C and F block auctions. Further, any change in ownership rules should also ensure that a consortium of small businesses or rural telecommunications companies can qualify for the F block auction only so long as each of the entities within the consortium separately qualifies for the auction.

Finally, the Coalition supports proposals to streamline disclosure of information in the Form 175s and Form 600s.⁴¹ Applicants should be permitted to demonstrate financial size without audited financial statements and should not have to disclose their partnership agreements if other ownership information is provided that allows observers to accurately judge an applicant's size, affiliation, real party in interest, other

³⁹ NPRM at para. 32.

⁴⁰ NPRM at para. 32.

⁴¹ NPRM at paras. 81-82.

ownership interests in CMRS licensees, and any agreements made concerning bidding strategy or future association with other telecommunications providers.

CONCLUSION

For all the aforementioned reasons, the Ad Hoc Rural PCS Coalition urges the Commission to take prompt action consistent with the comments made herein.

Respectfully submitted,

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